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PASS EB FOR BOEKER, L FOR FELDMAN, TREASURY FOR WIDMAN,
JUSTICE FOR KAUPER, FTC FOR FISCHBACH, COMMERCE FOR
ARRILL AND FOX, CIEP FOR GRANFIELD

E.O.11652: N/A

TAGS: EINV, EFIN, OECD

SUBJECT: THIRD MEETING OF OECD IME (INVESTMENT
COMMITTEE) JULY 9-10, 1975; IME DRAFTING GROUP
JULY 11

REFS: (A) IME(75)7

(B) IME(75)8

(C) IME(75)9

(D) IME(75)10

1. SUMMARY. OECD COMMITTEE ON INTERNATIONAL INVESTMENT
AND MULTINATIONAL ENTERPRISES (IME) REACHED STALEMATE
ON DRAFT GUIDELINES FOR MULTINATIONAL ENTERPRISES.
SWEDES, WITH HELP FROM CANADIANS AND AUSTRALIANS, LED
WRECKING OPERATION ON SECRETARIAT'S DRAFT PREAMBLE --
WHICH BASICALLY ACCEPTABLE TO U.S., GERMANS, AND U.K.
(FRENCH WERE ABSENT FROM MOST OF THE SESSIONS AND PARTI-
CIPATED MINIMALLY IN THOSE THEY ATTENDED.) SWEDES
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AND FRIENDS PARTICULARLY ATTACKED CONCEPT OF APPLICATION

OF GUIDELINES TO SIMILARLY-SITUATED NATIONAL FIRMS AND INCLUSION OF GOVERNMENTAL OBLIGATIONS VIS-A-VIS MULTINATIONAL FIRMS. U.S. DEL REACTED BY (1) DRAWING ALL MANNER OF LINKAGES BETWEEN THIS ESSENTIAL FRAMEWORK OF NON-DISCRIMINATION PLUS GOVERNMENTAL OBLIGATIONS AND ANY MEANINGFUL SUBSTANTIVE PROVISIONS ON DISCLOSURE, INDUSTRIAL RELATIONS, CONSULTATIVE MECHANISM, ETC. AND (2) BY GENERALLY TAKING MINIMAL POSITIONS ON ALL OF THESE. THIS PRODUCED DREARY MEETING, BUT CONVINCED MOST ARDENT ADVOCATES OF GUIDELINES (FRG AND U.K.) THAT THEY NOW MUST GO BILATERALLY TO STOCKHOLM TO GET SWEDES TO ACCEPT U.S. FRAMEWORK FOR GUIDELINES BEFORE ANY FURTHER PROGRESS ON SUBSTANCE POSSIBLE. CHAIRMAN (STEEG) PLANS TO CONVENE INFORMAL, RESTRICTED MEETING BEFORE IME SEPT. SESSION, HOPEFULLY TO RATIFY SCANDINAVIAN ACCEPTANCE OF U.S.-DESIRED FRAMEWORK AS BASIS FOR BREAKING STALEMATE AND PROCEEDING TO WORK OUT SUBSTANTIVE SECTIONS OF GUIDELINES. IME EXCHANGED VIEWS ON NATIONAL TREATMENT AND INCENTIVES AND DISINCENTIVES. UNDERSTOOD THESE ASPECTS CONTINUE TO BE PART OF "PACKAGE DEAL" WITH MNE GUIDELINES. NEXT MEETING OF IME SET FOR SEPT. 30-OCT. 1. IME DRAFTING GROUP MET JULY 11 TO CONTINUE WORK ON SOME SPECIFIC SECTIONS OF MNE GUIDELINES. MAJOR POINT OF DISAGREEMENT CONCERNS CONCEPT OF BUSINESS CONFIDENTIALITY. DRAFTING GROUP SCHEDULED TO MEET SEPTEMBER 3-4 AND POSSIBLY 5. END SUMMARY.

2. SECRETARIAT (ABRAMOWSKI) OPENED DISCUSSION ON MNE GUIDELINES BY INDICATING THAT REFDOC (A) REFLECTED INFORMAL DISCUSSIONS OF IME DRAFTING GROUP (ESPECIALLY MEETING JUNE 10-11) AS WELL AS MORE ADVICE FROM THE SPECIALIZED OECD COMMITTEES WORKING ON MNE PROBLEMS (TECHNOLOGY, RBP, FISCAL AFFAIRS).

3. FORM AND TITLE OF INSTRUMENT: U.S. DEL INDICATED PREFERENCE FOR USE OF WORD "GUIDELINES" AS TITLE FOR INSTRUMENT, EXPRESSING VIEW THAT USE OF PHRASE "CODE OF CONDUCT" MAY BE SOMEWHAT PATRONIZING. HE ALSO INDICATED PREFERENCE FOR PROMULGATION OF INSTRUMENT THROUGH A DECLARATION, RATHER THAN A RECOMMENDATION, BY OECD LIMITED OFFICIAL USE

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COUNCIL. U.S. DEL EXPRESSED NO OPPOSITION TO SECRETARIAT SUGGESTION THAT PREAMBLE MIGHT BE REDRAFTED FROM ITS CURRENT LEGALISTIC AND FORMAL FORMAT TO "PLAIN LANGUAGE" INTRODUCTORY PASSAGE, AS LONG AS IT MAINTAINED PRECISION OF ORIGINAL FORM AND CONTENT OF PREAMBLE. CANADA, NETHERLANDS, U.K., FRG, BELGIUM AND ITALY ALL EXPRESSED AGREEMENT WITH U.S. VIEWS ON THIS.

4. APPLICABILITY: SECRETARIAT INTRODUCED TOPIC BY INDICATING PROBLEMS REVEALED IN DISCUSSIONS IN DRAFTING GROUP IN TRYING TO DETERMINE TO WHOM (THE SUBSIDIARIES OR THE CENTRAL UNIT) THE SPECIAL AND INDIVIDUAL STANDARDS WOULD APPLY. NOTED THAT THE VARIOUS APPROACHES

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WERE EXTREMELY DIFFICULT TO HANDLE IN AN OPERATIONAL DOCUMENT. SECRETARIAT ATTACHED MOST IMPORTANCE TO UNDERLYING CONCEPT -- THAT THE STANDARDS SHOULD APPLY TO CENTRAL UNIT OR TO SUBSIDIARY, AS APPROPRIATE. SECRETARIAT ALSO EXPLAINED IT HAD ADDED CONCEPT THAT IN COMPARABLE SITUATIONS MNE STANDARDS WOULD APPLY TO NATIONAL ENTERPRISES AS WELL, IN NON-DISCRIMINATORY MANNER. DISCUSSION CENTERED ON (G) AND (H) OF DRAFT GUIDELINES IN REFD0C (A). ON DEFINITIONAL SIDE SWEDEN STATED IT VIEWED MNE AS AN ECONOMIC ENTITY, BASED ON INFLUENCE ONE MNE UNIT HAS ON DECISION-MAKING OF ITS OTHER UNITS. IN (H), SWEDISH DELEGATE SUGGESTED THAT PHRASE "...COMPONENT UNITS OF MNE'S MAY BE SO LINKED..." BE CHANGED TO "...ARE SO LINKED." U.K. DELEGATE INDI-

CATED SEARCH FOR EVIDENCE ABOUT INFLUENCE OF ONE MNE UNIT OVER ANOTHER IS DIFFICULT, AS HARD TO TELL WHICH UNITS AUTONOMOUS AND WHICH NOT. UNDER CIRCUMSTANCES, (G) AND (H) WERE ACCEPTABLE TO U.K., AND DISTINCTIONS WERE NOT OVERLY SIGNIFICANT, AS GUIDELINES WOULD ALSO APPLY TO DOMESTIC ENTERPRISES (IF APPROPRIATE). U.K. DEL ALSO NOTED EC IS LOOKING INTO MEANING OF "ECONOMIC LIMITED OFFICIAL USE

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ENTITY" IN EUROPEAN COURT. SWISS APPROVED IDEA OF NON-DISCRIMINATORY APPLICATION OF THE GUIDELINES.

5. U.S. DEL EXPRESSED AGREEMENT WITH U.K. AND NOTED (G) AND (H) WERE CAREFULLY-PUT-TOGETHER FORMULATION WHICH AVOIDS MANY DIFFICULTIES IN REST OF GUIDELINES. (REPEATEDLY IN LATER DISCUSSION OF SPECIFIC CHAPTERS OF GUIDELINE, U.S. POINTED OUT THAT EACH ONE CONTAINED MANY PROVISIONS WITH NO SPECIAL RELEVANCE TO MNES, AND THAT ABSENCE OF NON-DISCRIMINATION PRINCIPLE WOULD REQUIRE THEIR DELETION.) CANADIAN DEL ARGUED FOR REMOVAL OF LAST PART OF (H) REGARDING APPLICABILITY TO NATIONAL ENTERPRISES, BASED ON LOGIC THAT GUIDELINES DESIGNED FOR MNES, NOT FOR ANY OTHER ENTITIES. HE SUGGESTED THIS LAST PART EITHER BE PLACED IN BRACKETS IN PRESENT VERSION OF (H) (OR PLACED ELSEWHERE IN "PLAIN LANGUAGE" VERSION OF PREAMBLE), OR MERELY COVERED IN AN ACCOMPANYING EXPLANATORY STATEMENT AT TIME OF MNE DECLARATION ISSUED. FRG ARGUED FOR RETENTION OF NON-DISCRIMINATION PROVISIONS OF (H), AND U.K., AUSTRALIA AND IRELAND AGREED. FINLAND, NORWAY AND DENMARK FAVORED DELETION THESE PROVISIONS IN ACCORD WITH CANADIAN AND SWEDISH POSITION. IME DECIDED TO ASK DRAFTING GROUP TO CONSIDER HOW, IF AT ALL, CONCEPT NON-DISCRIMINATION COULD BE DEALT WITH IN "PLAIN LANGUAGE" VERSION OF PREAMBLE. IME AGREED THAT (1) MNE GUIDELINES WOULD APPLY TO ENTERPRISES OPERATING IN OECD, EVEN IF HEADQUARTERS WERE IN NON-MEMBER COUNTRY, AND (2) DEFINITION WOULD REMAIN VERY BROAD TO INCLUDE HOLDING COMPANIES, SALES ORGANIZATIONS AND BANKS AND INSURANCE COMPANIES AS WELL AS MANUFACTURING OPERATIONS.

6. INCLUSION OF STATEMENTS CONCERNING AGREED POLICIES OF GOVERNMENTS:

(A) IN DISCUSSION OF REFERENCES TO GOVERNMENTS (PARAS. 11-13 OF REFD0C A), SWEDEN, BACKED TO VARYING DEGREES BY DENMARK, FINLAND, JAPAN, CANADA, AUSTRALIA, NEW ZEALAND AND NORWAY, ATTACKED GUIDELINES AS EXCESSIVELY CONCERNED WITH OBLIGATIONS AND POLICIES OF GOVERNMENTS, AS OPPOSED TO THOSE OF MNE'S, AND AS "UNBALANCED" IN CITING BENEFITS OF MNE'S AS OPPOSED TO

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PROBLEMS CAUSED BY THEM.

(B) SPECIFICALLY, IN PREAMBLE SWEDEN WISHED TO DELETE LAST PARTS OF "C" AND "D" AS NOT RELEVANT AND ONE-SIDED; THE NON-DISCRIMINATORY PART OF "H," BECAUSE GUIDELINES SHOULD AIM AT MNE'S ALONE; ALL OF "I," AS HARMONIZATION OF STATISTICS SHOULD BE LEFT TO INDUSTRY COMMITTEE, SINCE HARMONIZATION OF LEGISLATION ON MNE WAS ENDLESS, HOPELESS TASK, AND BECAUSE RELATIONS BETWEEN LDC'S AND DC'S SHOULD NOT BE DISCUSSED IN OECD BUT ONLY UN (SIC); AND ALL OF "J," FOR THIS PART OF PACKAGE SHOULD NOT REFER TO GOVERNMENT OBLIGATIONS, AS THESE ARE TREATED IN OTHER TWO PARTS OF OECD INVESTMENT PACKAGE.

(C) U.S. DEL STATED GENERAL ACCEPTANCE OF PREAMBLE. COMMENTING ON ATTACKS ON PREAMBLE, U.S. DEL ARGUED THERE MUST BE BALANCE BETWEEN GOVERNMENT AND ENTERPRISE OBLIGATIONS NOT ONLY AS AMONG VARIOUS PARTS OF THE "PACKAGE," BUT ALSO WITHIN THE MNC GUIDELINES. GUIDELINES DIFFER FROM OTHER PARTS OF PACKAGE, WHICH ARE AIMED AT INTER-GOVERNMENTAL AGREEMENTS. BUT GUIDELINES ARE ADDRESSED TO PRIVATE PARTIES WHO ARE ASKED TO ADHERE TO THEM.

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ATTITUDE OF PRIVATE PARTIES IN DECIDING UPON ADHERENCE WILL BE STRONGLY INFLUENCED BY INTERNAL BALANCE OF GUIDELINES. INTERNAL BALANCE ALSO IMPORTANT BECAUSE NOT YET DECIDED WHETHER GOVERNMENTS MUST ADHERE TO ALL THREE PARTS OF PACKAGE AS AGAINST BEING OFFERED A MENU WITH CHOICES. ALSO, MNE'S ALONE CANNOT RESOLVE PROBLEMS OF CONFLICTING LAWS AND POLICIES; THIS MUST BE RECOGNIZED AS PRIMARILY A GOVERNMENTAL OBLIGATION. FINALLY, NATIONAL TREATMENT GUIDELINE ALONE DOES NOT COVER ALL GOVERNMENTAL OBLIGATIONS CONTAINED IN INTERNATIONAL LAW, SO COMPLETE BALANCE CANNOT BE ACHIEVED IN THIS WAY. U.S. VIEW ON INTERNAL BALANCE OF GUIDELINES SUPPORTED BY GERMANY, SWITZERLAND AND U.K. AND, TO CERTAIN EXTENT, HOLLAND AND EC.

(D) U.S. DEL POSED QUESTION OF WHETHER OBJECTIONS TO INCLUSION OF GOVERNMENT OBLIGATIONS WERE BASED ON FORMAT OF THEIR PRESENTATION (IN WHICH CASE THEY COULD BE PUT IN AN EXPANDED NATIONAL TREATMENT GUIDELINE, TIED TO MNE GUIDELINE) OR RATHER ON SUBSTANCE OF OBLIGATIONS TO OBEY INTERNATIONAL LAW, CONSULT ON CONFLICTING LAWS, ETC. NO LIMITED OFFICIAL USE

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CLEAR ANSWER FORTHCOMING FROM OTHER DELS.

(E) REFERENCE TO DISPUTE SETTLEMENT MECHANISMS IN "I" WAS SUBJECT OF SOME DISCUSSION, WITH SWEDES AND SUPPORTERS SAYING THIS NOT RELEVANT TO GUIDELINES AND ANTAGONISTIC TO LDC'S. U.S. DEL AND OTHERS AGREED THIS SECTION COULD BE SEPARATED FROM PROVISION RELATING TO LDC'S AND MADE GENERAL, FOR BOTH DC'S AND LDC'S. SECRETARIAT STATED THAT PROVISION REFERRED ONLY TO ICSID, NOT TO ANY FUTURE MEANS OF DISPUTE SETTLEMENT.

(F) IN EFFORT TO RESOLVE SUBSTANTIVE DIFFERENCES TO SOME DEGREE, THERE WAS SUPPORT, INCLUDING FROM U.S., FOR PROPOSAL THAT SECRETARIAT WITH HELP FROM DRAFTING GROUP WRITE NON-LEGAL INTRODUCTORY PASSAGE IN SUCH A WAY AS TO MAINTAIN SUBSTANCE OF REFERENCES TO GOVERNMENTS, WHILE MEETING SOME OF THE PROBLEMS WITH FORM OF PRESENTATION PERCEIVED BY SOME DELEGATES. U.S. DEL SUGGESTED BIAC

MIGHT BE CONSULTED ON WHETHER REFERENCES TO GOVERNMENT OBLIGATIONS MADE GUIDELINES AS A WHOLE MORE ACCEPTABLE TO BUSINESS COMMUNITY.

7. DISCLOSURE OF INFORMATION: DISCUSSION BEGAN WITH SECRETARIAT NOTING THAT IN INFORMAL CONTACTS THIS WAS SECTION IN WHICH BIAAC WAS MOST INTERESTED. SEVERAL DELEGATIONS (FRG, SWEDEN, NETHERLANDS, AUSTRALIA, U.K.) STATED THAT WITHOUT SIGNIFICANT SECTION ON PUBLIC INFORMATION, GUIDELINES WOULD BE MEANINGLESS, AS ONLY HIGHEST DEGREE OF TRANSPARENCY COULD SHED LIGHT ON OPERATIONS OF MNE'S AND THEREBY REMOVE MANY MISCONCEPTIONS ABOUT MNE'S WHICH ARE BASED ON IGNORANCE OF THEIR OPERATIONS. THESE DELEGATIONS FAVORED ALTERNATIVE "C" ON P. 7 OF REFDOK A, AND ESPECIALLY THE GEOGRAPHICAL BREAKDOWN OF INFORMATION, PREFERABLY BY COUNTRY AS "CONVENIENT GEOGRAPHICAL AREA" COULD BE AS LARGE AS A CONTINENT. U.S. DEL (SUPPORTED BY JAPAN AND SWITZERLAND) SUPPORTED LANGUAGE CLOSE TO ALTERNATIVE B ON P. 4 OF REFDOK A. HE NOTED THAT LEGITIMATE APPROACH TO PUBLICATION OF MEANINGFUL INFORMATION WITH GEOGRAPHICAL BREAKDOWN WOULD REQUIRE (A) GETTING GOVERNMENTS TO AGREE ON MINIMUM STANDARDS OF DISCLOSURE FOR NATIONAL ENTERLIMITED OFFICIAL USE

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PRISES, AND (B) AGREEING TO HARMONIZED ACCOUNTING STANDARDS SO THAT INFORMATION WOULD BE SIGNIFICANT AND IN ANY SENSE COMPARABLE. OTHERWISE, GOAL OF SECTION, PUBLIC ENLIGHTENMENT, WOULD NEVER BE ACHIEVED WHILE COMPETITIVE DISADVANTAGE AND INCORRECT COMPARISONS OF INFORMATION WOULD RESULT. U.S. DEL ASKED SECRETARIAT TO INFORM COMMITTEE WHAT PARTS OF ALTERNATIVES A, B AND C ARE NOW REQUIRED BY OECD GOVERNMENTS TO BE PUBLICLY DISCLOSED BY NATIONAL ENTERPRISES.

8. CHAIRMAN NOTED THAT INDUSTRY COMMITTEE WOULD NOT HAVE RESULTS ON THIS QUESTION UNTIL NEXT YEAR, BUT WOULD TRY TO OBTAIN INFORMATION. CHAIRMAN ACKNOWLEDGED DETAILED INFORMATION REQUIREMENTS WOULD BE EXPANSION OF PRESENT GERMAN LAW, BUT IN STRONG STATEMENT SAID THAT IF INFORMATION PROVISION WENT NO FURTHER THAN PRESENT LAW, THEN ENTIRE GUIDELINES EXERCISE WOULD NOT BE WORTH EFFORT. INFORMATION SECTION WAS ONE OF MOST IMPORTANT, AND THERE MUST BE COMPROMISE AND MOVEMENT. U.S. DEL REPLIED THAT WITHOUT RESOLVING QUESTION OF INTERNAL BALANCE, GUIDELINES WOULD BE MERE POLITICAL BRAVADO, AS COMPANIES WOULD NEVER AGREE TO ABIDE BY GUIDELINES,

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ESPECIALLY IF INFORMATION SECTION RESULTED IN BREACH OF BUSINESS CONFIDENTIALITY AND COMPETITIVE DISADVANTAGE. BERTRAND OF SECRETARIAT WONDERED WHETHER GOVERNMENTS WHO SOUGHT DETAILED INFORMATION HAD IN MIND PURPOSES FOR WHICH THEY WANTED THE INFORMATION. HE SAID PUBLIC APPREHENSIONS ABOUT MNE'S WERE ABOUT THEIR POWER, SIZE, ETC., AND THAT MORE INFORMATION WOULD NOT HELP RELIEVE THESE FEARS. IF DETAILED INFORMATION IS IN FACT ADVANTAGEOUS TO MNE'S, THEN SHOULD TRY TO CONVINCE MNE'S OF THAT FACT, NOT JUST GOVERNMENTS. (SWEDISH DEL SPOKE OF NEW LEGISLATION IN PARLIAMENT WHICH WOULD REQUIRE INFORMATION FROM SWEDISH MNE'S TO BE BROKEN DOWN BY SUBSIDIARY.)

9. IN BRIEF DISCUSSION OF INFORMATION TO GOVERNMENTS, (P. 13, REFD0C A), U.S., SWITZERLAND, BELGIUM, CANADA FAVORED LESS DETAILED ALTERNATIVE A, WHILE GERMANY, ITALY, FINLAND FAVORED MORE DETAILED ALTERNATIVE B. HOWEVER, ONLY U.S. INSISTED THAT ENTERPRISES THEMSELVES DECIDE ISSUES OF BUSINESS CONFIDENTIALITY. OTHERS GENERALLY AGREED WITH SECRETARIAT FORMULATIONS REQUIRING LIMITED OFFICIAL USE

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GOVERNMENTS TO MAINTAIN CONFIDENTIALITY. MOST DELEGATIONS ACCEPTED INCLUSION OF PLANNED INVESTMENT, ALTHOUGH FRG OBJECTED STRONGLY. U.S. ASKED THAT "EXPECTATIONS" BE SUBSTITUTED FOR "PLANNED."

10. EMPLOYMENT AND INDUSTRIAL RELATIONS. MAIN ISSUE WAS WHETHER MNES SHOULD BE REQUIRED TO ADHERE TO STANDARDS DIFFERENT FROM THOSE EXPECTED OF NATIONAL FIRMS. IN PARTICULAR, WHETHER (A) MNES SHOULD PROVIDE MORE DATA TO EMPLOYEES IN COLLECTIVE BARGAINING, (B) MNES REQUIRED TO FOLLOW "NORMAL" OR "MODEL" PRACTICES IN LABOR AND EMPLOYMENT MATTERS AND (C) THERE BE GUIDELINES GOVERNING CONDITIONS OF TRANSFER OF OPERATIONS IN CASES OF LABOR DISPUTES, ANTI-DISCRIMINATION IN PERSONNEL POLICY AND EMPLOYEE PARTICIPATION IN DECISION MAKING. (IN REFDOC A, FORMULATIONS OF GUIDELINES GIVEN OPTIONALLY AS ALTERNATIVE A, DETAILED GUIDELINES, AND ALTERNATIVE B WHICH LIMITED TO FEW RECOMMENDATIONS.) US DELEGATE INDICATED GUIDELINES NOT UNIQUELY APPLICABLE TO MNES BUT ALSO TO DOMESTIC FIRMS. HE STRONGLY UNDERLINED IMPORTANCE OF MAINTAINING PRINCIPLE OF NON-DISCRIMINATION. IF THIS NOT REFLECTED IN GUIDELINE, THEN THERE IS NO BASIS FOR A GUIDELINE ON INDUSTRIAL RELATIONS. US DELEGATE ALSO NOTED THAT MNES SHOULD NOT BE REQUIRED TO BE "MODEL" EMPLOYERS, BUT RATHER "COMPARABLE TO SIMILARLY-SITUATED LOCAL EMPLOYERS". ON INFORMATION, US DEL FAVORED SUPPLYING WHAT IN ACCORD WITH HOST COUNTRY LAW AND PRACTICE. HE OPPOSED INCLUDING GUIDELINES ON TRANSFER OF OPERATIONS DURING LABOR DISPUTES AND EMPLOYEE PARTICIPATION IN MANAGEMENT. READ OUT STATEMENT ON DISCRIMINATION AGAINST WOMEN AND MINORITIES. INDICATED ALTERNATIVE B OF SECRETARIAT DRAFT GENERALLY ACCEPTABLE ALTHOUGH COULD ALSO AGREE TO PARTS OF ALTERNATIVE A.

11. CANADIANS AGREED WITH US VIEW THAT MNES NOT UNIQUELY DIFFERENT FROM NATIONAL FIRMS, BUT GENERALLY WERE CRITICAL OF GUIDELINE. REGARDED IT AS DOMESTIC NECESSITY BECAUSE OF TUAC RELATIONSHIP. UK SUPPORTED ALTERNATIVE A. FAVORED MORE INFORMATION, FELT MNES SHOULD BE BETTER THAN AVERAGE EMPLOYERS (CITING ICC LIMITED OFFICIAL USE

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GUIDELINE TO THIS EFFECT), FAVORED SOME RESTRAINTS ON TRANSFER OF OPERATIONS BY MNES DURING STRIKES, AND

SUPPORTED INCLUSION OF SECTION ON EMPLOYEE PARTICIPATION IN MANAGEMENT. GERMANY ALSO FAVORED ALTERNATIVE A ALTHOUGH INDICATED IT COULD ACCEPT ALTERNATIVE B.

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SWEDEN STRONGLY SUPPORTED ALTERNATIVE A ENDORSING NEED FOR MNES TO GIVE UNIONS MORE DATA, FAVORED HIGHER STANDARDS FOR MNES AND GREATER EMPLOYEE INVOLVEMENT IN MANAGEMENT DECISIONS. SWITZERLAND, JAPAN' SPAIN GENERALLY SUPPORTED ALTERNATIVE B WHILE NETHERLANDS AND BELGIUM SUPPORTED ALTERNATIVE A. OUTCOME OF DISCUSSION INCONCLUSIVE WITH BASIC DIFFERENCES STILL REMAINING ON MAIN ISSUES. CHAIRMAN NOTED DRAFTING GROUP COULD NOT DO MUCH ON THIS ITEM IN VIEW BASIC DIFFERENCES AMONG DELEGATIONS.

12. TECHNOLOGY. US DELEGATE RAISED QUESTION OF RESPONSIBILITY OF GOVERNMENTS VERSUS RESPONSIBILITY OF ENTERPRISES IN FIELD OF TECHNOLOGY. SAID IN RECENT UNCTAD EXPERTS SESSION ON TECHNOLOGY TRANSFER DRAFT

OUTLINE AGREED BY GROUP B COUNTRIES RECOGNIZED
RESPONSIBILITY OF GOVERNMENTS AND NEED TO TREAT
MNES EQUITABLY IN ACCORDANCE WITH PRINCIPLES OF
INTERNATIONAL LAW. WOULD BE HIGHLY REGRETTABLE IF
OECD COUNTRIES TOOK DIFFERENT VIEW. US DEL ALSO
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REITERATED IMPORTANCE OF RETAINING IN PREAMBULAR
SECTION J(1) AND (2) (REFDOC (A), P. 12) REFERENCE
TO INTERNATIONAL LAW AND RESPONSIBILITY OF STATES
TO COOPERATE IN CASES WHERE MNES ARE SUBJECTED TO
CONFLICTING LAWS, POLICIES OR REGULATIONS. IN
REGARD TO SPECIFIC POINTS OF DRAFT GUIDELINE
(REFDOC (A), P. 19) US DELEGATE THOUGHT PARA (1) WAS
ACCEPTABLE. IN PARA 2 HE SUGGESTED DELETION WORDS
"MOST" AND "NEW" SO THAT PHRASE NOW READS "...THE
RAPID DIFFUSION OF TECHNOLOGIES..." THIS WOULD BE MORE
USEFUL IN LDC CONTEXT SINCE DIFFUSION OF EXISTING
TECHNOLOGY IS MOST IMPORTANT TO THEM. US ALSO INDICATED
PARA 3 (LICENSING) IS ADEQUATELY COVERED IN GUIDELINES
ON RESTRICTIVE BUSINESS PRACTICES. UK FAVORED GUIDE-
LINES AND ACCEPTED US PROPOSAL RE PARA 2 (AS DID CANADA)
BUT WANTED TO RETAIN PARA 3. NO FINAL DECISION TAKEN
AND STEEG RECOMMENDED THAT DECISION ON PARA 3 BE HELD
OVER FOR NEXT MEETING OF IME.

13. RESTRICTIVE BUSINESS PRACTICES. THERE WAS
GENERAL ACCEPTANCE OF RESTRICTIVE BUSINESS PRACTICE
GUIDELINE PROPOSED IN SECRETARIAT PAPER, EXCEPT FOR
STRONG RESERVATIONS BY SWITZERLAND AND MINOR RESERVA-
TIONS BY THE US. SWITZERLAND COULD NOT ACCEPT SUBPARA 3
DEALING WITH PARENT COMPANY RESTRICTIONS ON REALES,
EXPORTS AND PRODUCTION OF SUBSIDIARIES, BECAUSE IT
FELT (A) MNE WAS ECONOMIC ENTITY WHICH SHOULD NOT BE
SUBDIVIDED TO APPLY RULES OF COMPETITION AMONG COMPONENT
UNITS (B) TRANSACTIONS AMONG MEMBERS OF THE SAME CORPOR-
ATE GROUP HAD LITTLE TO DO WITH COMPETITION POLICY AND
(C) GUIDELINE WAS OVERLY DRASTIC DEPARTURE FROM MOST
EXISTING NATIONAL LAWS WHICH DO NOT MAKE SUCH INTRA-
CORPORATE TRANSACTIONS ILLEGAL. THE US (A) NOTED COULD
ACCEPT SUBPARA 3, EVEN THOUGH IT CONFUSED TRADE AND
COMPETITION POLICY (B) RECALLED PREVIOUS IME MEETING
SEEMED TO AGREE TO REDUCE SCOPE OF SUBPARA 1 BY DELETING
THE EXAMPLES AND TO ELIMINATE THE CLAUSE IN SUBPARA 5
RELATING TO INFORMATION REQUESTS AND (C) NOTED THAT
EXCEPT FOR SUBPARA 3 GUIDELINE DID NOT DEAL WITH UNIQUE
PROBLEMS OF MNES BUT EQUALLY APPLICABLE TO DOMESTIC
ENTERPRISES.

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14. FINANCING. NO DELEGATION HAD PROBLEMS WITH PROPOSED GUIDELINE EXCEPT CANADA WHICH SUGGESTED STRENGTHENING AND BROADENING LANGUAGE BY REQUIRING MNES TO "RESPECT" (RATHER THAN "TAKE INTO CONSIDERATION") BALANCE OF PAYMENTS, EXCHANGE RATES (CANADIAN ADDITION) AND CREDIT POLICIES OF THE HOME AND HOST COUNTRIES.

15. TAXATION. SECRETARIAT INTRODUCED TAX GUIDELINE BY NOTING (A) WP ON MNES OF FISCAL AFFAIRS COMMITTEE HAD CONCLUDED PROPOSED GUIDELINES WOULD NOT FACILITATE

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WORK OF NATIONAL TAX OFFICIALS BUT WERE NONETHELESS PROBABLY NEEDED IN A SET OF GUIDELINES AND (B TWO COUNTRIES IN WP DID NOT WANT ANY GUIDELINES AND TWO OTHERS WANTED

SUBSTANTIVE MODIFICATION OF SUBPARA 2. AFTER REFUSAL TO ACCEPT US SUGGESTION THAT TAX PROVISIONS BE ELIMINATED FROM GUIDELINES, THERE WAS GENERAL ACCEPTANCE OF THE SUBSTANCE OF THE PROPOSED DRAFT. HOWEVER, PROBLEMS WERE RAISED WHICH REQUIRE DRAFT TO BE RETURNED TO WP ON TAXATION OF MNES AT ITS MID-OCTOBER 1975 MEETING. SPECIFICALLY, CONCERN WAS EXPRESSED REGARDING (A) INTERPRETATION OF PHRASE "PRINCIPLES OF NATIONAL LAW" IN SUBPARA 2 WHICH MIGHT BE CONSTRUED TO IMPLY GUIDELINES APPLY TO LEGAL TAX MINIMIZATION OR AVOIDANCE AS WELL AS ILLEGAL TAX EVASION AND (B) EFFECT OF GUIDELINES IN NON-OECD COUNTRIES AND POSSIBILITY THAT LDCS WOULD USE THEM TO INCREASE THEIR TAXATION OF OECD-MNES.

16. POLITICAL ACTIVITY OF MNES. SWEDEN PROPOSED NEW GUIDELINE WHICH WOULD PREVENT MNES FROM ENGAGING IN POLITICAL ACTIVITY OR MAKING POLITICAL CONTRIBUTIONS LIMITED OFFICIAL USE

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IN HOST COUNTRIES. THERE WAS NO SUPPORT FOR PROPOSAL. TIME AGREED TO CONSIDER IT FURTHER AT NEXT MEETING. US STRONGLY OBJECTED POINTING OUT (A) DIFFICULTIES IN DEFINING "POLITICAL ACTIVITY" (E.G. DOES IT INCLUDE LEGITIMATE LOBBYING) (B) PROBLEM COULD NOT BE SOLVED BY VOLUNTARY GUIDELINE FOR MNES WHEN CORPORATE POLITICAL CONTRIBUTIONS WERE LEGAL AND OFTEN EXPECTED IN MANY OECD COUNTRIES AND (C) PROBLEM WOULD BE BEST TACKLED BY HARMONIZATION OF LEGISLATION TO PROHIBIT (AS IN US) CORPORATE POLITICAL CONTRIBUTIONS. CANADA EXPRESSED DOUBT ABOUT ACCEPTABILITY OF GUIDELINE BY NATIONAL POLITICAL PARTIES; THE UK FELT IT NEEDED MUCH "FURTHER THOUGHT" AND FRANCE OBJECTED STRONGLY AS DEALING WITH AREA WHERE ACTIVITIES OF MNE DID NOT POSE PROBLEMS DIFFERENT FROM NATIONAL ENTERPRISES.

17. CONSULTATIONS. SWEDES AND GERMANS STRONGLY SUPPORTED PARA 3 OF ANNEX TO INTER-GOVERNMENTAL PROCEDURES PAPER--REFDOC (B)--PROVIDING FOR CONSULTATION ON PERFORMANCE OF INDIVIDUAL MNES UNDER GUIDELINES. THE SWEDES SAID IT "PUT SOME TEETH" INTO GUIDELINES, AND GERMANS SAID IT WAS IMPORTANT FOR "SURVEILLANCE" AND FOR ALLAYING PUBLIC CONCERN ABOUT MNES. GERMANS SUGGESTED THAT THE HOST GOVERNMENT FIRST TRY TO WORK OUT PROBLEMS WITH MNE, THEN WITH GOVERNMENT WHERE HOME OFFICE OF MNE LOCATED AND ONLY FINALLY IN OECD FORUM. THE BRITISH CONCURRED BUT ADDED THAT MNES SHOULD HAVE A RIGHT TO BE HEARD AND THAT FOLLOWING THE FINDINGS OF AN OECD "TRIBUNAL" OECD ISSUE A REPORT ON AN ERRANT MNE.

CANADA FELT BILATERAL DISCUSSIONS BETTER BUT WOULD NOT RESIST PARA 3 ALTHOUGH THEY DID NOT SEE NEED FOR PARA 1 IN VIEW OF THE NATIONAL TREATMENT TEXT. US DEL STRONGLY OPPOSED PARA 3 AS A FORMULA FOR ANIMOSITY, TRIAL OF MNE IN ABSENTIA, THOROUGHLY UNFAIR PROCEDURE AND UNSUITABLE TO VOLUNTARY GUIDELINE. HE DID, HOWEVER, SUPPORT PARA 1 WHEREBY GOVERNMENTS WOULD CONSULT WHERE THERE IS CONFLICT OF LAW AFFECTING MNES. AUSTRALIANS, CANADIANS AND SWISS SAID THEY PERSUADED OF US POSITION ON PARA 3.

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18. NATIONAL TREATMENT. IN OPENING DISCUSSION ON NATIONAL TREATMENT FOR ENTERPRISES UNDER FOREIGN CONTROL (REFDOC C), CHAIRMAN REMINDED ME THIS WAS 'PART OF THE PACKAGE DEAL'. GIVEN INTRANSIGENCE OF SOME MEMBERS ON MNE GUIDELINES, US DEL FELT IT IMPORTANT THAT NATIONAL TREATMENT PAPER BE TIGHTENED UP IN ORDER TO HAVE NEGOTIATING ROOM IN LATER NEGOTIATION ON PACKAGE. ACCORDINGLY, US DEL PUT FORWARD FOLLOWING SUGGESTION FOR PARAGRAPH 8 OF ANNEX TO REFDOC (C). QUOTE: EXCEPTIONS INTRODUCED AFTER ENTRY INTO FORCE OF THE PRESENT INSTRUMENT MUST BE JUSTIFIED TO THE (COMMITTEE) AS FOLLOWS: (A) FOR MEASURES JUSTIFIED UNDER ARTICLE 4 ABOVE, NO LATER THAN THIRTY DAYS AFTER INTRODUCTION OR (B) FOR MEASURES NOT JUSTIFIED UNDER ARTICLE 4 ABOVE, DURING CONSULTATIONS BEFORE INTRODUCTION OF THE MEASURES. UNQUOTE. US DEL REAFFIRMED STRONG PREFERENCE FOR PARAGRAPH 1(B) OF ANNEX AND POINTED OUT NEED FOR PRECISE LANGUAGE IN REFERENCES TO PARTICIPATING OECD MEMBERS AND NON-MEMBERS IN ORDER AVOID CREATION OF OBLIGATIONS VIS-A-VIS NON-PARTICIPANTS.

SWISS, DUTCH, BELGIANS AND DANES SUPPORTED US POSITION,

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ALTHOUGH DANES WILLING TO WEAKEN CONSULTATION PROVISIONS (PARA 16 AND 17 OF ANNEX). SWISS SUGGESTED THIS DOCUMENT BE AN OECD RESOLUTION; NO OTHER DELEGATIONS DISAGREED. CANADIANS, AUSTRALIANS AND SWEDES REMAINED MUTE. JAPANESE REITERATED POSITION THIS SHOULD BE "BEST EFFORTS" DOCUMENT AND PREFERENCE FOR PARAS 1(A) AND 8(A) UNTIL MORE "EXPERIENCE" IS GAINED. U.K., ITALY AND SPAIN SUPPORTED THIS BUT U.K. SUGGESTED THAT THE DRAFTING GROUP TRY COMPROMISE LANGUAGE BETWEEN PARA 8(A) AND NEW US PROPOSAL NOTED ABOVE. US DEL THOUGHT THIS PREMATURE. GERMANS SAID WOULD SUPPORT PARA 1(A) AND 8(A) IF THERE WERE COMMITMENT BY OECD MEMBERS TO GO FROM THIS WEAKER LANGUAGE TO STRONGER TEXT IN LIGHT OF EXPERIENCE WITH THIS AS WORKING DOCUMENT. SPAIN SAID WOULD BE HELPFUL IF MEMBERS WOULD LIST CURRENT EXCEPTIONS AND SECRETARIAT NOTED IT HAD BEEN WAITING A YEAR FOR RESPONSES TO THEIR REQUEST ON THIS POINT. DUTCH FELT MEMBERS SHOULD BE ABLE TO CONSULT ON EXISTING EXCEPTIONS AND SECRETARIAT SAID THIS WAS INTENTION IN PRESENT DRAFT.

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19. INCENTIVES/DISINCENTIVES. BRIEF CONSIDERATION OF OFFICIAL INCENTIVES AND DISINCENTIVES PAPER--REFDOC D-- DID NOT BRING OUT DISAGREEMENT AT US DEL SUGGESTED CHANGES WHICH REFERRED PRIMARILY TO THE EARLIER VERSION OF THE INCENTIVES/DISINCENTIVES PAPER IN WHICH IT WAS MORE CLEARLY STATED THAT GOVERNMENTS, IN CHOOSING BETWEEN VARIOUS MEASURES, WOULD CHOOSE THOSE WHICH

WOULD KEEP HARMFUL EFFECTS TO A MINIMUM. GERMAN POSITION THAT PAPER SHOULD ISOLATE ONLY THOSE POLICIES AIMED AT FOREIGN INVESTMENT WAS NOT ACCEPTED. GERMANS ALSO EMPHASIZED PAPER SHOULD NOT APPLY TO DOMESTIC OR REGIONAL INVESTMENT PROGRAMS WHICH MAY ALSO EFFECT FOREIGN INVESTMENT AND THAT THEIR TAX AUTHORITIES CONCERNED THAT TAX CONFIDENTIALITY MAY BE BREACHED BY CONSULTATIONS ON TAX TREATMENT. JAPAN AGREED WITH GERMANS, BUT SWISS AND DUTCH ALIGNED WITH US POSITION. US AGREED TO SUPPLY DRAFTING CHANGES FOR BOTH INVESTMENT AND NATIONAL TREATMENT GUIDELINES. .

20. CONSULTATIONS WITH BIAC/TUAC (PARA 29 OF REF A): COMMITTEE DISCUSSED NATURE AND TIMING OF CONSULTATIONS WITH BIAC/TUAC AND POSSIBILITY OF DERESTRICTING OECD DOCUMENTS FOR CONSIDERATION BY NATIONAL ORGANIZATIONS. IT WAS AGREED NOT TO DERESTRICT AT THIS STAGE, BUT THAT NEXT VERSION DRAFT GUIDELINES WOULD BE MADE AVAILABLE TO BIAC AND TUAC THROUGH NORMAL OECD CHANNELS. IN MEANTIME, INFORMAL DISCUSSIONS BY GOVERNMENTS WITH BUSINESS AND LABOR GROUPS COULD PROCEED ON GENERAL ISSUES RAISED BY GUIDELINES.

21. IME DRAFTING GROUP MEETING JULY 11. GROUP CONSIDERED CHAPTERS ON GENERAL POLICIES AND INVOLVEMENT OF LOCAL INTERESTS. GROUP AGREED TO PROPOSED U.S. DRAFT REGARDING RESPECT FOR ECONOMIC AND SOCIAL POLICIES OF HOST GOVERNMENTS, AS SUBSTITUTE FOR MORE SPECIAL SECTIONS 2 AND 3 OF ALTERNATIVE B IN SECRETARIAT DRAFT. MAJOR DISAGREED POINT REMAINS CONCEPT OF BUSINESS CONFIDENTIALITY, WHERE US ALONE MAINTAINS THIS AFFECTS BOTH WHAT INFORMATION ENTERPRISES PROVIDE AND HOW GOVERNMENTS TREAT IT. OTHERS DEFINE LIMITED OFFICIAL USE

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BUSINESS CONFIDENTIALITY AS ONLY A RESTRICTION ON HOW GOVERNMENTS TREAT INFORMATION ONCE PROVIDED.

22. DRAFTING GROUP AGREED TO ELIMINATE SEPARATE SECTION ON INVOLVEMENT OF LOCAL INTERESTS AND TO INCLUDE IN GENERAL POLICIES SECTION A REFERENCE TO POLICIES ON LOCAL PARTICIPATION AND LOCAL NATIONALS IN MANAGEMENT. BRIEF DISCUSSION OF DISCLOSURE OF INFORMATION HIGHLIGHTED BY STRONG, REPEATED EUROPEAN EMPHASIS ON GEOGRAPHIC BREAKDOWN OF FINANCIAL DATA AND AGGRESSIVE US STATEMENTS RESPONDING THAT IT IS IMPOSSIBLE TO ENVISAGE ANY PROVISIONS ON DISCLOSURE WITHOUT KNOWING WHETHER OR NOT GUIDELINES ARE DISCRIMINATORY WITH REGARD TO MNES AND NATIONAL FIRMS. DRAFTING GROUP

WILL MEET AGAIN SEPTEMBER 3,4 AND POSSIBLY 5 TO REVIEW
SECRETARIAT'S REDRAFT OF THE PREAMBLE AND TO REVIEW
SECTIONS ON DISCLOSURE AND GENERAL POLICIES IN
PARTICULAR. FULL TIME SCHEDULED MEET
SEPTEMBER 30-OCTOBER 1.
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